

SBCivil Writ Petition No.4271/1993

Tej Singh
vs.
State of Rajasthan & Ors.

Date of Order :: 13th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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By this petition for writ a challenge is given to the order dated 27.7.1993 passed by Superintendent of Police, Udaipur exercising powers under Rule 244(2) of the Rajasthan Service Rules, 1951 (hereinafter referred to as "the Rules of 1951") retiring the petitioner compulsorily in public interest.

The contention of counsel for the petitioner while giving challenge to the order impugned is that no sufficient material was available with the Superintendent of Police, Udaipur to form an opinion that retention of the petitioner in service shall be against public interest or to say that compulsory retirement of the petitioner is in public interest.

This Court by order dated 10.7.2006 directed the respondents to produce the entire record including recommendations of the committee that recommended for

compulsory retirement of the petitioner. In pursuant to that the entire record is shown to the Court today by counsel for the respondents. From perusal of original record it is apparent that the respondents formed opinion to the effect that retention of the petitioner shall not be in public interest on basis of 11 penalties imposed upon him in his entire service career. The respondents also considered the annual confidential reports of the petitioner pertaining to the years 1986-87, 1987-88, 1988-89, 1989-90 and 1990-91. In the annual confidential reports for the years 1989-90 and 1990-91 the working of the petitioner is treated below average.

Hon'ble Supreme Court in the case of Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another, reported in AIR 1992 SC 1020, laid down certain principles to adjudge the cases of compulsory retirement. The principles laid down in the case of Baikuntha Nath Das (supra) are as under:-

“32.The following principles emerge from the above discussion:

(i)An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii)The order has to be passed by the Government on forming the opinion that it is

in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) malafide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it

uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This object has been discussed in paras 29 to 31 above."

From perusal of record of the petitioner I am satisfied that subjective satisfaction of the competent authority while forming an opinion to compulsorily retire the petitioner is based on objective considerations. The decision impugned is neither outcome of malafides nor it is arbitrary. The record of the petitioner for entire service span is taken into consideration and is thoroughly considered. The continuous inefficient working of the petitioner warranted his weeding out from service under Rule 244 (2) of the Rules of 1951.

In view of whatever stated above, I do not find any merit in this petition for writ. The same, therefore, is dismissed.

(GOVIND MATHUR),J.

kkm/ps.